

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal (Ld) No. 802 of 2004
in
Notice of Motion No.1996 of 2002
in
Suit No. 2470 of 2002

1. Express Industrial Services
Private Limited and ors. ..Appellants

vs.

1. Housing Development Finance
Corporation and ors. ..Respondents

Mr.R.A.Dada, Sr.Counsel i/b Mr.D.P.Desai for
appellants
Mr.P.K.Samdhani with Ms.Priya Dwarkadas i/b M/s
Wadia Ghandy & Co. for respondents.

**CORAM: A.P.SHAH &
S.J.VAZIFDAR JJ.
18th March, 2005**

P.C.

1. Heard Advocates.

2. The challenge is to the order passed by the learned single Judge in a Notice of Motion taken out by the plaintiff. By this ad-interim order of appointment of the Receiver was confirmed by the learned single Judge. The plaintiffs are seeking a monetary decree in the sum of Rs.5,07,32,508/- with interest. In November 1999 the plaintiffs sanctioned a loan of Rs.3.60 crores for a period of 21 months to defendant no.1. The loan was to be secured by mortgaging the office premises owned by

defendant no.1 in Mittal Towers, Nariman Point, Mumbai. Defendant No.1 requested the plaintiff that till the final security of Mittal Towers is created and as an interim security the said loan be secured by mortgaging an industrial gala owned by one Shyama Industrial Industries. Subsequently defendant no.1 requested the plaintiffs to release the said gala of M/s Shyama Industrial Industries and to accept the industrial premises belonging to defendant nos. 2 and 3 being flat no.10, 5th floor, South Wing, Sterling apartment, till such time the security of Mittal Towers property was created. The loan was thereafter disbursed. Defendant no.1 has failed to repay the amount due to the plaintiffs and have also failed to create the mortgage of Mittal Towers property.

3. Today the amount due and payable to the plaintiffs is more than Rs.7 crores. There is no dispute that the defendants had agreed to repay the loan by instalments but nothing has been paid. The only submission is that the suit flat was offered as security till mortgage in respect of Mittal Towers is created. It is admitted position that no mortgage was created in respect of Mittal Towers premises although it is promised that Mittal Tower premises would be secured and the plaintiffs' loan would be paid off no steps were taken to secure

that property. In the circumstances the learned single Judge has rightly held that no fault could be found with the plaintiffs in not releasing the flat which was already under mortgage. Therefore, no interference is warranted with the order of the learned single Judge. Appeal is dismissed.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Notice of Motion No.3752 of 2004
in
Appeal (Ld) No. 802 of 2004
in
Notice of Motion No.1996 of 2002
in
Suit No. 2470 of 2002

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Private Limited and ors. ..Appellants

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1. Heard Advocates.

2. Motion is made absolute in terms of prayer
clause (a).